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THE PENAL CODE OF SOVIET RUSSIA

Accurate information of the legal conditions of Soviet Russia is very difficult to obtain at present. The available books and articles rarely go beyond the early months of 1918. For that reason the following brief summary may be of interest. It is derived from an article by Eugenio Cuello Calón, in the July, 1922, number of the Revista General de Legislación y Jurisprudencia, pages 34-46. Sr. Calón attended the lectures of Dr. Zaitzeff at Berlin and gives us some of his notes as a supplement to that gentleman's article in Zeitschrift für Ges. Strafw. 43 (February 2, 1922).

In February, 1918, the Imperial legislation of Russia was declared to be still in force. In November of the same year it was abolished *en bloc* and the only source of law was declared to be

"the revolutionary juridical conviction," to be administered by extraordinary commissions. We know with what severity these commissions were juridically and revolutionarily convinced of the necessity for repression. December, 1919, the first draft of "Guiding Principles of Penal Law" appeared under the signature of Commissary Stutschka. One of these principles is that punishment is not an expiation but an attempt to secure the freedom of the social order from disturbance, and that further it must be sharply individualized. Among the punishments listed as possible there are all varieties from "public censure" to execution, including such relatively novel things as "being boycotted" or being declared an "enemy of the Revolution." Above everything, all sentences are indeterminate without either minimum or maximum limit, and the much discussed principle of *nulla poena sine lege* wholly abrogated.

Finally, in the early months of 1922, the plan of the new Civil Code, consisting of 247 articles, appeared.

It divides offences into two classes: A. Those attacking "the residue of the pre-revolutionary organization." B. Those attacking the "forms of administration and the social relations created by the Soviets."

Among the penalties listed are such relatively new ones as conditional condemnation, as well as forced labor without imprisonment. But the death penalty is not included, having been in form abolished in 1920. However, for certain "contra-revolutionary" crimes, among which are "offences against the administration," the death penalty apparently is still inflicted. It is to be noted that one of the crimes "against the State" is that of giving "religious instruction in public or private schools," punishable by a maximum of one year's forced labor.

In other respects the penal code keeps many of the old categories that such codes have had in Europe for centuries. We hear of crimes against the person, insults (punishable by six months' imprisonment or a fine of five hundred gold rubles) and, to our great surprise, crimes against property. In defining the last the utmost care is taken not to seem to recognize any right of private ownership so that theft is "the secret abstraction of that which is found in the possession, use or under the management of another person."

It is to be noted that the information here conveyed is at second or even third hand. We cannot be sure that there has been nothing lost or distorted in transmission. It certainly seems surprising that counterfeiting of postage stamps is a capital offence (p. 44)

or that religious instruction in private schools is forbidden. We should like some further information as to the extent to which the death penalty really has become an exceptional form of punishment. While we are waiting for more fully authenticated accounts the present summary of Sr. Calón's article may serve as the basis for a later discussion of the same subject. *Max Radin.*

Comment on Cases

ADMIRALTY: HARTER ACT: GENERAL AVERAGE: LIABILITY FOR LOSS OF GOODS JETTISONED AFTER NEGLIGENT STRANDING—No legislation has so changed the policy of the nation concerning contracts regulating the liability of carriers by sea for the negligence of their servants as has the Harter Act.[1] In its character as a compromise between the shipping and carrying interests,[2] the act has given rise to many difficulties, and every new construction of it becomes a matter of importance, both in this country and in other countries whose contracts may be affected by it.[3] From the first the act has been construed as being applicable only between owner and shipper and as not affecting the relations of either with third parties,[4] the leading case on this point being The Delaware,[5] in which case the act came before the Supreme Court for the first time.

The greatest difficulties in construction have arisen in connection with general average. The first case in the Supreme Court to discuss the act in relation to this rule was The Irawaddy,[6] in which the owner of a vessel sought general average contribution, following a negligent stranding by the master, for sacrifices made by him in a successful effort to save vessel, freight and cargo. It was held that the effect of the act was merely to relieve the owner from liability under certain conditions but not to give him any new rights,[7] thereby in no way extending the operation of the act beyond

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[1] Act Feb. 13, 1893, c. 105, 27 Stat. 445, U. S. Comp. Stat. §8029 et seq.

[2] Hughes on Admiralty, p. 166.

[3] Carver's Carriage by Sea, §1039.

[4] Hughes on Admiralty, § 92; Carver's Carriage by Sea, §103f; citing The Delaware (1896) 161 U. S. 459, 16 Sup. Ct. Rep. 516, 40 L. Ed. 771; The Chattahooche (1899) 173 U. S. 540, 19 Sup. Ct. Rep. 491, 43 L. Ed. 801; The Kensington (1901) 183 U. S. 263, 22 Sup. Ct. Rep. 102, 46 L. Ed. 190.

[5] Supra, n. 4.

[6] (1898) 171 U. S. 187, 18 Sup. Ct. Rep. 831, 43 L. Ed. 130.

[7] Mr. Justice Shiras, "Plainly the main purposes of the act were to relieve the shipowner from liability for latent defects, not discoverable by the utmost care and diligence, and, in event that he has exercised due diligence to make his vessel seaworthy, to exempt him and the ship from responsibility for damage or loss resulting from faults or errors in navigation or in the management of the vessel. But can we go further, and say that it was the intention of the act to allow the owner to share in the benefits of a general average contribution to meet losses occasioned by faults in the navigation and management of the ship." Holding that this could not be done.